

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to water permitting and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 9, “Delegation of Construction Permitting Authority,” to adopt a new Chapter 9 with the same title, and to amend Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.105, 455B.173, and 455B.265.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 17A.3, 455B.105, 455B.171, 455B.172, 455B.173 to 455B.176, 455B.177 to 455B.183, 455B.184 to 455B.187, 455B.261, 455B.262, 455B.264, 455B.265, 455B.266 to 455B.274, and 455B.278.

Purpose and Summary

The proposed amendments conform the rules with 2019 Iowa Acts, Senate File 409, signed by Governor Reynolds on May 9, 2019. Proposed changes to Chapter 9 provide wastewater and water supply delegated construction permitting authority to rural water systems organized under Iowa Code chapter 357A or 504. The delegated authority is for the permitting of wastewater sewer extensions and water supply water main extensions. Chapter 9 has not been updated since 1985, and other rule making changes include updating forms, updating references to construction standards, and establishing criteria for rescission and revocation of delegated permitting authority.

There are two proposed amendments to Chapter 50. The first amendment changes the Iowa Department of Natural Resources’ (Department’s) annual permit fee budgeting criteria to evaluate expenses in past and succeeding years. The second proposed amendment changes the requirement for a second public notice for water use permit issuance at community public water supplies, allowing for the use of alternate methods of publishing the notice.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 5, 2020. Comments should be directed to:

Diane Moles
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Fax: 515.725.8202
Email: diane.moles@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location:

March 4, 2020
10 to 11 a.m.

DNR Conference Room 2N
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind 567—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9

DELEGATION OF CONSTRUCTION PERMITTING AUTHORITY

567—9.1(455B) Scope. Iowa Code section 455B.183 delegates construction permitting authority over certain sewer and water main extensions to qualified local public works departments and rural water systems organized under Iowa Code chapter 357A or 504. This chapter describes the manner and criteria under which the department oversees this delegated authority.

567—9.2(455B,17A) Forms. The following forms are to be used by the local public works department or rural water system implementing this authority:

- 542-1001: Application for delegating permitting authority to local public works departments
- 542-1002: Statement of engineer's qualifications
- 542-1003: Review checklist for water main extensions at local public works departments
- 542-1004: Review checklist for sewer extensions
- 542-1005: Quarterly report for permitting authority

542-1057: Application for delegating permitting authority to rural water systems

542-1058: Review checklist for water main extensions at rural water systems

567—9.3(455B) Procedures. A local public works department or rural water system incorporated under Iowa Code chapter 357A or 504 exercising permitting authority for sewer or water supply distribution system extensions under Iowa Code section 455B.183 shall notify the director in writing prior to the first permit issuance, using Form 542-1001 or 542-1057, as applicable, and 542-1002. Additional information may be requested by the director.

567—9.4(455B) Criteria for permitting authority at local public works departments. The requirements for permitting authority at local public works departments are as follows:

9.4(1) Permitting authority under this rule applies only to extensions which:

a. Primarily serve residential consumers and will not result in an increase greater than 5 percent of the capacity of the treatment works or system, or will serve fewer than 250 dwelling units.

b. In the case of sewer extensions, will not exceed the capacity of any treatment works which received a federal or state monetary grant after 1972.

c. In the case of water main extensions, will not exceed the production capacity of any system constructed after 1972.

9.4(2) The local public works department's standard specifications must be in conformance with the Iowa Standards for Sewer Systems cited in 567—paragraph 64.2(9) "b," or the water supply construction standards in rule 567—43.3(455B), and must be filed with and approved by the department.

9.4(3) The reviewing engineer shall be licensed as a professional engineer in Iowa and shall be employed by the local public works department.

9.4(4) When reviewing applications for sewer and water supply distribution system extensions under its jurisdiction, the local public works department shall use the Iowa Standards for Sewer Systems, the water supply construction standards in rule 567—43.3(455B), and the local standard specifications approved by the department.

9.4(5) The local public works department shall use Form 542-1003 or Form 542-1004, as applicable, when reviewing plans. Upon issuance of each permit, the local public works department shall submit to the department a copy of the permit and a copy of the form used during the review.

9.4(6) The local public works department shall submit to the department a complete quarterly report using Form 542-1005 by the fifteenth day of the month following each quarter of the calendar year.

9.4(7) Plans for which a construction permit has been issued shall be retained on file by the local public works department for the life of the extension or until the extension has been platted.

567—9.5(455B) Criteria for permitting authority at rural water systems. The requirements for permitting authority at rural water systems incorporated under Iowa Code chapter 357A or 504 are as follows:

9.5(1) Permitting authority under this rule applies only to extensions which:

a. Primarily serve residential consumers and will not result in an increase greater than 5 percent of the capacity of the treatment works or system, or will serve fewer than 250 dwelling units.

b. In the case of sewer extensions, will not exceed the capacity of any treatment works which received a federal or state monetary grant after 1972.

c. In the case of water main extensions, will not exceed the production capacity of any system constructed after 1972.

9.5(2) The rural water system's standard specifications must be in conformance with the Iowa Standards for Sewer Systems cited in 567—paragraph 64.2(9) "b," or the water supply construction standards in 567—43.3(455B), and must be filed with and approved by the department. The system's hydraulic modeling must comply with the water supply distribution system standards pursuant to rule 567—43.3(455B).

9.5(3) The reviewing engineer shall be licensed as a professional engineer in Iowa and shall be employed or retained by the rural water system.

9.5(4) When reviewing applications for sewer and water supply distribution system extensions under its jurisdiction, the rural water system shall use the Iowa Standards for Sewer Systems, the water supply construction standards in rule 567—43.3(455B), and the local standard specifications approved by the department.

9.5(5) The rural water system shall use Form 542-1003 or Form 542-1058, as applicable, when reviewing plans. Upon issuance of each permit, the rural water system shall submit to the department a copy of the permit and a copy of the form used during the review.

9.5(6) The rural water system shall submit to the department a complete quarterly report using Form 542-1005 by the fifteenth day of the month following each quarter of the calendar year.

9.5(7) Plans for which a construction permit has been issued shall be retained on file by the rural water system for the life of the extension.

567—9.6(455B) No variance allowed. No variance to the design standards is allowed under delegated permitting authority. If a variance to the design standards is needed, the local public works department or rural water system must apply to the department for an individual construction permit following the wastewater permit procedures in rule 567—60.4(455B) and rule 567—64.2(455B) and the water supply permit procedures in 567—subrule 40.4(1).

567—9.7(455B) Criteria for rescission or revocation of delegated permitting authority.

9.7(1) The local public works department or rural water system may voluntarily request that its permitting authority be rescinded by submitting the request in writing to the director.

9.7(2) The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in Iowa Code chapter 17A if the director determines that a public works department or rural water system with delegated permitting authority has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems, or which otherwise violate state or federal requirements.

These rules are intended to implement Iowa Code sections 17A.3, 455B.105 and 455B.171 to 455B.187.

ITEM 2. Amend subparagraph **50.4(2)“b”(2)** as follows:

(2) The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar ~~year~~ years and on the ~~budget~~ anticipated expenses for the next succeeding fiscal year years. The department will review the annual permit fee each year and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. Permit holders that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees. The department shall request commission approval of the amount of the annual fee no later than September 30 of each year.

ITEM 3. Amend paragraph **50.7(3)“a”** as follows:

a. New permits and modifications of permits.

(1) ~~Applicable to all except community public water supplies. Before~~ Prior to the issuance of a permit to withdraw, divert or inject water, the department shall publish a notice of recommendation to grant a permit. The notice shall summarize the application and the recommendations in the summary report. The notice shall allow 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause. The notice ~~shall may~~ be published in a newspaper circulated in the locality of the proposed water source, ~~or the department may use other methods of publishing the notice to ensure adequate notice to the affected public.~~ The notice shall be sent to any person who has requested a copy of the notice concerning the particular water use under consideration.

(2) ~~Applicable only to community public water supplies. Prior to the issuance of a permit to withdraw, divert or inject water to a community public water supply, the department shall publish a~~

~~notice of recommendation to grant a permit. The notice shall allow 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause. The notice shall include a brief summary of the proposed permit and shall be published in a newspaper of general circulation within the county of the proposed water source as provided in Iowa Code section 618.3. If the newspaper of general circulation is not the newspaper of the nearest locality to the proposed water source that publishes a newspaper, the notice shall also be published in the newspaper of the nearest locality to the proposed water source that publishes a newspaper, and the department may charge the applicant for the expenses associated with publishing the notice in the second newspaper. The notice shall be sent to any person who has requested a copy of the notice concerning the particular water use under consideration.~~